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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 634

JOEL McDANIEL, *Petitioner,*

v.

CAMPBELL, WYANT & CANNON FOUNDRY COMPANY AND MICHIGAN MUTUAL LIABILITY COMPANY, *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The award of the Hearing Referee of the Michigan Workmen's Compensation Department (8a, 9a)* is

* Numbers in parentheses followed by the letter "a" indicate pages of petitioner's appendix filed in the Court below. Lower case Roman numerals indicate pages of the appendix to the petition filed in this Court.

unreported. The opinion and order of the Appeal Board of that department (11a, 13a) is not officially reported, but may be found in 1960 Workmen's Compensation Department Opinions on Review, p. 691, published by Workmen's Compensation Opinions, P.O. Box 38, Alfred Street Station, Detroit, Michigan. The opinion of the Supreme Court of Michigan (i) is reported at 367 Mich. 356.

JURISDICTION

The jurisdictional requisites are set forth in the petition, at page 2.

QUESTION PRESENTED

Whether the 14th Amendment to the United States Constitution is violated by that provision of the Michigan occupational disease statute which establishes $10,500 as the maximum to be awarded for death or disability from silicosis or other dust disease, without fixing a like maximum in cases involving other forms of occupational disease.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The 14th Amendment to the United States Constitution is as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Part VII, § 4, of the Michigan Workmen's Compensation Act (Comp. Laws 1948, § 417.4, Stat. Ann., § 17.223) is as follows:

> "Compensation shall not be payable for partial disability due to silicosis or other dust disease. In the event of temporary or permanent total disability or death from silicosis or other dust disease, notwithstanding any other provisions of this act, compensation shall be payable under this part to employees or to their dependents in the following manner and amounts: If disablement or death occurred during the first calendar month in which Act No. 61 of the Public Acts of 1937 became effective not exceeding the sum of $600.00; if disablement or death occurred during the second calendar month after such act became effective not exceeding the sum of $700.00; thereafter the total compensation and benefits payable for disability and death shall increase at the rate of $100.00 each calendar month. The aggregate amount payable shall be determined by the total amount payable in the month in which disablement or death occurs. *In no event shall such compensation exceed an aggregate total of $10,500.00*; Provided, That rights accruing prior to the effective date of this amendatory act shall be preserved and governed by the provisions of this section prior to the effective date of this amendatory act: Provided, That where silicosis or other dust diseases were first made compensable by Act No. 245 of the Public Acts of 1943, then in such instances the graduated benefit provision of this section shall begin to apply to disability or death resulting from such diseases as to the effective date of such act."

The italicized sentence is the crux of this case. The graduated benefit provisions are not involved, petitioner's disability having occurred at a time when he was entitled to the $10,500.00 maximum.

STATEMENT

Petitioner Joel McDaniel was employed by respondent Campbell, Wyant & Cannon Foundry Company of Muskegon, Michigan. In 1956, he became disabled from silicosis and applied for workmen's compensation. The Hearing Referee awarded compensation in the amount of $57.00 per week, with a maximum of $10,500.00.

The Michigan Workmen's Compensation Appeal Board modified this award by removing the $10,500.00 limitation.

The Supreme Court of Michigan reversed the decision of the Appeal Board. On remand, the Appeal Board was in effect directed to reinstate the $10,500.00 limitation.

ARGUMENT

In the petition for a writ of certiorari, the only basis advanced for the granting of the writ is that the decision of the Supreme Court of Michigan was in error.

On the contrary, the decision of that Court was clearly correct.

The question before that court was whether the Michigan legislature could put claims for death or disability from silicosis or other dust diseases in a class by themselves and limit the amount recoverable on such claims, without imposing a like limitation on claims for compensation arising out of other forms of occupational disease.

In its opinion, the Michigan court stated that the test for the validity of such a classification was whether a state of facts could be conceived which would form a reasonable basis for such classification.

This is the proper test. In *McGowan* v. *State of Maryland*, 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 387 (1961), this Court said:

> "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

The Michigan court then stated three peculiar aspects of silicosis and other dust diseases which, in its opinion, justified the legislature in imposing a special limitation on the recovery to be allowed in such cases. These three peculiar aspects are:

1. That exposure to silicosis and other dust diseases is limited to a relatively narrow segment of industry, which, in the absence of a limitation on the amount recoverable in such cases, might make the cost of compensation insurance prohibitively expensive for the few industries involved;

2. That silicosis accounts for a very high percentage of all occupational diseases, which, if recovery therefor was not limited, might cause the costs of compensation insurance generally to increase greatly; and

3. That workers affected by silicosis are more readily employable in other occupations, where there is no exposure to dust, than is true of workers suffering from other compensable injury or disease.

Surely these peculiar aspects of silicosis and other dust diseases form a reasonable basis for placing claims for death or disability resulting therefrom in a class by themselves.

But, argues the petitioner, these were not in fact the reasons for which the Michigan legislature originally enacted the limitation on the amount recoverable in

silicosis cases. He says that the real reason was something else, to protect employers from the hazard of accrued liability at the time the statute first took effect, a hazard which has since been eliminated by the passage of time.

Assuming this to be true, the validity of the statutory Classification is not thereby affected. If the classification is justifiable on the basis of any reasoning, this Court has said that it is "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision." *Flemming* v. *Nestor*, 363 U.S. 603, 80 S. Ct. 1367, 4 L. Ed. 2d 1435 (1960).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari in this case should be denied.

Respectfully submitted.

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